

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

In the Matter of	)	
	)	
Amendment of Section 73.202(b),	)	MM Docket No. _____
Table of Allotments,	)	RM- _____
FM Broadcast Stations	)	
(Mooreland and Woodward,	)	
Oklahoma)	)	

DOCKET FILE COPY ORIGINAL

To: The Chief, Allocations Branch

**PETITION FOR RULE MAKING AND  
REQUEST FOR ORDER TO SHOW CAUSE**

FM 92 Broadcasters, Inc. ("FM 92"), by its attorneys and pursuant to Section 1.401 of the Commission's rules, hereby petitions the Commission to institute a rule making proceeding to amend Section 73.202(b), Table of Allotments, FM Broadcast Stations, to: (1) delete Channel 261C1 at Woodward, Oklahoma; (2) allot Channel 228A at Woodward; and (3) allot Channel 261C1 at Mooreland, Oklahoma. As discussed below, Channel 261C1 at Woodward is presently a reserved upgrade channel that has lain fallow for nearly six years, and the construction permit to implement that upgrade has been canceled. Deleting Channel 261C1 at Woodward would return to the public broadcast spectrum that is being needlessly wasted, and allotting Channel 261C1 to Mooreland would further the Commission's goal of providing a community with its first local service. FM 92 intends to promptly apply for Channel 261C1 if it is allotted to Mooreland and promptly build the station if its application is granted.

FM 92 also requests the Commission to issue an Order to Show Cause why the license of Fuchs Communications, Inc. ("Fuchs") for station KWFX(FM), Woodward, Oklahoma, should not be modified to specify operation on Channel 228A. As discussed below, Fuchs never

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implemented its nearly six-year-old authority to upgrade its Woodward station to Channel 261C1, and, in fact, requested and was granted cancellation of its construction permit to implement the upgrade. The substitution of Channel 228A for Channel 261C1 should pose no hardship to Fuchs, as Fuchs never left Channel 228A in the first place. In fact, as discussed below, Fuchs currently is monopolizing both Channel 228A and Channel 261C1, but is broadcasting on neither channel.

## DISCUSSION

### A. The Commission Should Substitute Channel 228A for Channel 261C1 at Woodward

1. In 1990, Fuchs, licensee of KWFX(FM), Channel 228A, Woodward, Oklahoma, filed a Petition for Rule Making requesting that Channel 261C1 be substituted for Channel 228A at Woodward, and that its license be modified to specify the non-adjacent, higher powered channel. The Commission subsequently substituted Channel 261C1 for Channel 228A at Woodward. Amendment of Section 73.202(b), Table of Allotments, FM Broadcast Stations (Woodward, Oklahoma), Report and Order, MM Docket No. 90-286, RM-7285, 5 FCC Rcd 6628 (November 9, 1990) (“1990 Report and Order”). The 1990 Report and Order also modified Fuchs’ license to operate on Channel 261C1, *subject to the conditions* that Fuchs file an FCC Form 301 modification application to implement the upgrade within 90 days of the effective date of the channel substitution and conduct program tests. Fuchs filed its implementing modification application in December 1991, and that application was granted on April 22, 1992. See FCC File No. BPH-911220IE.

2. However, Fuchs never constructed the upgraded facilities authorized by its implementing construction permit. Indeed, on August 8, 1994, some two years after the permit was granted, Fuchs filed a letter with the Commission requesting cancellation of its construction

permit to upgrade its facilities and dismissal of its pending application for extension of that permit. The Commission subsequently canceled the construction permit and dismissed the extension application. See Letter to A.R. Fuchs, from Dennis Williams, Chief, FM Branch, Audio Services Division, Mass Media Bureau, FCC, FCC Reference No. 1800B3-KEH (September 2, 1994).<sup>1/</sup> *KWFX(FM), therefore, has never ceased operating on Channel 228A, and remains licensed on Channel 228A. Furthermore, with the cancellation of its upgrade construction permit, there is no indication that KWFX's upgrade will be implemented anytime in the foreseeable future.* Indeed, it now appears that KWFX(FM) is not even operating on its never-relinquished Class A channel.<sup>2/</sup>

3. Thus, for almost six years, Fuchs has monopolized two channels in Woodward: Channel 261C1, which has lain fallow the entire six-year period, and Channel 228A, which is now dark. FM 92 urges the Commission to end this unfavorable situation by substituting Channel 228A for Channel 261C1 at Woodward, Oklahoma and allotting Channel 261C1 to Mooreland, Oklahoma, thereby allowing FM 92 to utilize Channel 261C1 to provide the community with its first local service. FM 92 also requests that the Commission issue an Order to Show Cause why Fuchs' license should not be modified to specify operation on KWFX's present channel, i.e., Channel 228A at Woodward.<sup>3/</sup>

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<sup>1/</sup> Fuchs later filed an application to assign the KWFX license to Classic Communications, Inc. See FCC File No. BAPLH-951128GJ. The application was granted on March 12, 1996. However, Commission records indicate that the Commission approved the assignment of KWFX's license *and* its canceled construction permit to upgrade the station's facilities. Of course, Fuchs cannot assign a construction permit that has been canceled. FM 92 is filing a Petition for Reconsideration of the grant of the assignment.

<sup>2/</sup> According to Commission records, KWFX(FM) went dark on December 1, 1995.

<sup>3/</sup> FM 92 is filing the instant petition following the dismissal of a petition for rule making  
(continued...)

B. The Commission Should Allot Channel 261C1 as Mooreland's First Local Service

4. Generally, Section 307(b) of the Communications Act, as amended, requires that channel allotments be made to communities with geographically identifiable population groupings. Mooreland, Oklahoma easily qualifies as a community for allotment purposes. See Revision of FM Assignment Policies and Procedures, Second Report and Order ("FM Assignments"), BC Docket No. 80-130, 90 FCC 2d 88, 101 (1982) (noting that if a community is incorporated or listed in the U.S. Census, it qualifies as an independent community for allotment purposes).

5. Mooreland is an incorporated community of 1,157 residents and is located in Woodward County, which has a total population of 18,796, according to the 1990 U.S. Census. Mooreland has its own town government, which includes a mayor, vice-mayor, three trustees,

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<sup>3/</sup> (...continued)  
that FM 92 filed on January 22, 1996. That petition was returned as "unacceptable for consideration" because Channel 261C1 remains reserved for Fuchs' use, despite the fact that Fuchs requested and was granted cancellation of its construction permit to upgrade to the channel. See Letter to Kathryn R. Schmeltzer and Kevin M. Walsh, from John A. Karousos, Chief, Allocations Branch, Policy and Rules Division (February 21, 1996).

It appears illogical that Channel 261C1 would remain allotted to Woodward for Fuchs' use when Fuchs requested cancellation of its construction permit to upgrade to the channel and the request was granted. Furthermore, Fuchs continued to operate on its licensed channel -- Channel 228A. The fact that Channel 228A was never reallotted to Woodward and Channel 261C1 was never deleted from Woodward is an apparent oversight that was never corrected by either Fuchs or the Commission. Thus, in an effort to ensure that Channel 261C1 is made available for use, FM 92 is formally requesting the substitution of Channel 228A for Channel 261C1 at Woodward and requesting the issuance of an order to show cause why Fuchs' KWFX(FM) license should not be modified to specify operation on Channel 228A.

In accordance with Commission allotment policy, FM 92 hereby pledges to reimburse Fuchs for its reasonable and prudent expenses in "relocating" from Channel 261C1 to Channel 228A. Of course, FM 92 expects that costs would be minimal, given the fact that KWFX has never commenced operations on the upgraded channel.

clerk, treasurer, town administrator, auditor, attorney, building inspector, and utility foreman. Mooreland has 17 volunteer fire personnel and two full-time police officers. Mooreland has its own tax collection system, court system, water treatment system, electric system, and school system, which offers a complete primary and secondary education. Mooreland has dozens of retail, wholesale, and service-related businesses, including two tax offices, a bank, a telephone company, a large grocery store, a hardware and auto supply store, body shops, beauty shops, gift shops, restaurants, convenience stores, a farmer's co-op, a realty company, a motel, a nursing home, a funeral home, an attorney, a dentist, doctors, electricians, plumbers, mechanics, and building contractors. Mooreland also has a noncommercial airport and its own weekly newspaper. There are a half dozen churches located in the community. Finally, Mooreland is situated along heavily traveled U.S. 412, which intersects highways U.S. 281 and U.S. 183/270 not far from Mooreland.

6. The Commission has long held that providing a community with its first local service is a top priority of its FM allotment policy, and takes precedence over the upgrade of an existing station. FM Assignments, 90 FCC 2d 88, 92. Mooreland has no local FM service despite the fact that it clearly qualifies as a community for allotment purposes, as detailed above.

7. The allotment of Channel 261C1 to Mooreland is consistent with the Commission's rules regarding spacing among FM broadcast stations. As demonstrated in the attached Engineering Statement, the allotment of Channel 261C1 to Mooreland would not create short-spacing problems with any of the relevant Oklahoma, Kansas, or Texas radio stations. Also, there is a site from which city-grade service to Mooreland can be provided.

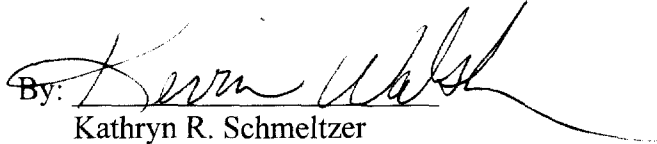
CONCLUSION

FM 92 has demonstrated that: (1) Fuchs has failed to request that Channel 261C1 be deleted from Woodward, despite the fact that Fuchs no longer holds a valid construction permit for the channel and has failed to utilize the channel for the past six years; (2) Fuchs is occupying Channel 228A at Woodward with a station that is dark; thus Fuchs is monopolizing two channels but is providing no service to its community; (3) FM 92 is prepared to promptly apply for and construct on Channel 261C1 if it is allotted to Mooreland; (4) Mooreland is a community for allotment purposes; (5) the reallocation of Channel 261C1 from Woodward to Mooreland would remove a channel that has lain fallow for nearly six years from a community that already has several radio stations to a community that has no local service; (6) the allotment of Channel 261C1 to Mooreland would further the Commission's goal of providing a first local service to a community; and (7) the allotment of Channel 261C1 at Mooreland can be made in full compliance with the Commission's FM technical rules.

WHEREFORE, the premises considered, FM 92 Broadcasters, Inc. respectfully requests the Commission to issue a Notice of Proposed Rule Making to amend Section 73.202(b), Table of Allotments, FM Broadcast Stations, to: (1) delete Channel 261C1 at Woodward, Oklahoma; (2) allot Channel 228A to Woodward; and (3) allot Channel 261C1 to Mooreland, Oklahoma. FM 92 also requests the Commission to issue an Order to Show Cause why the license of Fuchs, for KWFX(FM), should not be modified to specify operation on Channel 228A.

Respectfully submitted,

FM 92 BROADCASTERS, INC.

By:   
Kathryn R. Schmeltzer  
Kevin M. Walsh

Its Attorneys

FISHER WAYLAND COOPER  
LEADER & ZARAGOZA, L.L.P.  
2001 Pennsylvania Avenue, NW  
Suite 400  
Washington, DC 20006  
(202) 659-3494

March 21, 1996

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**SELLMEYER ENGINEERING**  
BROADCAST AND COMMUNICATIONS CONSULTING ENGINEERS  
P. O. Box 356 McKinney, Texas 75069  
MEMBER AFCCE  
(214) 542-2056

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ENGINEERING STATEMENT IN SUPPORT OF

PETITION FOR RULEMAKING

TO AMEND SECTION 73.202(b) OF THE RULES

MOORELAND, OKLAHOMA

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JANUARY, 1996



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ENGINEERING STATEMENT IN SUPPORT OF  
PETITION FOR RULEMAKING  
TO AMEND SECTION 73.202(b) OF THE RULES  
MOORELAND, OKLAHOMA  
JANUARY, 1996

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This Firm has been retained by FM 92 Broadcasters, Inc. to prepare this Engineering Statement in support of its Petition for Rulemaking to add FM Broadcast Channel 261C1 to the Table of Allotments, Section 73.202(b) of the Rules at Mooreland, Oklahoma.

PROPOSED CHANNEL

A frequency search was conducted of all channels in the non-reserved portion of the FM band to determine a suitable channel for allotment at Mooreland, Oklahoma. Channel 261C1 will provide wide area service to Northwestern Oklahoma from a special reference point approximately 10 kilometers southwest of the Mooreland reference point. The Special Reference Point is located at:

N.L.: 36° 22' 05"  
W.L.: 99° 16' 21"

A spacing study at this location appears herein as Exhibit 1.

A map showing the area in which to locate the proposed transmitter site appears herein as Exhibit 2. Sufficient area is available in which to locate a tower of suitable height to fully realize the potential coverage of this proposed allotment.

PROPOSED CITY

Mooreland, Oklahoma is an incorporated town under the laws of Oklahoma, located in Woodward County, Oklahoma. The community presently has no local service. The addition of Channel 261C1 will provide a first local service to this Community.

STATUS OF PROPOSED CHANNEL

The proposed channel was originally allotted to the nearby community of Woodward, Oklahoma in Docket 90-286 and reserved for Station KWFX which is presently assigned to Channel 228A. Subsequent to the allotment of Channel 261C1 as a substitute for Channel 228A, Fuchs Communications, Inc. applied for and was eventually issued a construction permit, file number BPH-911220IE, authorizing an upgrade of the KWFX facilities to Channel 261C1. On August 8, 1994, Fuchs Communications, Inc. submitted a letter to the Commission requesting cancellation of its

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construction permit, file number BPH-911220IE and its application for additional time to construct facilities, file number BMPH-940422JC. The Commission Staff by letter 1800B3-KEF dated September 2, 1994 cancelled both the construction permit and the application requesting additional time to construct the authorized facilities. A copy of this letter is included as Exhibit 3.

Under Commission Policy, the allotment is now available for use in another community. FM 92 Broadcasters, Inc. hereby requests the Commission to amend Section 72.207 as follows:

PRESENT AND PROPOSED ALLOTMENTS

WOODWARD, OKLAHOMA

PRESENT

221C3, 228A, 240A, 261C1, 266C, 272A

WOODWARD, OKLAHOMA

PROPOSED

221C3, 228A, 240A, 266C, 272A

MOORELAND, OKLAHOMA

PROPOSED

261C1

INTENT TO APPLY FOR FACILITY

FM 91 Broadcasters, Inc. will apply for and promptly construct facilities for Channel 261C1 at Mooreland, Oklahoma, if granted by the Federal Communications Commission.

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**BROADCAST AND COMMUNICATIONS CONSULTING ENGINEERS**  
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EXHIBIT-1  
FM 92 BROADCASTERS, INC.  
FM SPACING STUDY

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01-12-1996                Sellmeyer Engineering                PAGE 1

FM Study for: NEW          FCC Database Date: 12/95          36-22-05
Location: MOORELAND, OK    Channel Class: C1          99-16-21
Call City, State          Chan Class Freq kW Latitude Dist. Required
Status Proponent          File Number HAAT Longitude Azm. Clear (km)
-----
>>>>>>> Study For Channel 261 100.1 MHz <<<<<<<<

ALLOC WOODWARD, OK        261 C1 100.1        36-20-40 25.8 245
VAC                               Docket-90-286        0 99-28-00 246.0 -219.2 SHORT
Site restricted-Effective 12-24-90-Reserved for KWFY Per D90-286

KTCM KINGMAN, KS          262 C2 100.3 48. 37-29-59 159.25 158
LIC BLISS COMMUNICATIONS, BLH-891010KE 154 98-10-24 37.6 +1.25 CLOSE

KIXR PONCA CITY, OK       261 A 100.1 3.00 36-47-19 204.5 200
LIC MUR-THOM BROADCASTING BLH-840814BY 91 97-02-53 76.1 +4.5 CLOSE

KXLS ALVA, OK             259 C1 99.7 100. 36-35-41 94.1 82
LIC LESSO, INC.           BLH-810320AE 256 98-15-38 74.2 +12.1 CLOSE

KOMX PAMPA, TX            262 C2 100.3 32. 35-34-39 175.1 158
LIC PAMPA BROADCASTERS, BLH-810519AB 88 100-57-08 240.4 +17.1 CLEAR
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# SELLMEYER ENGINEERING

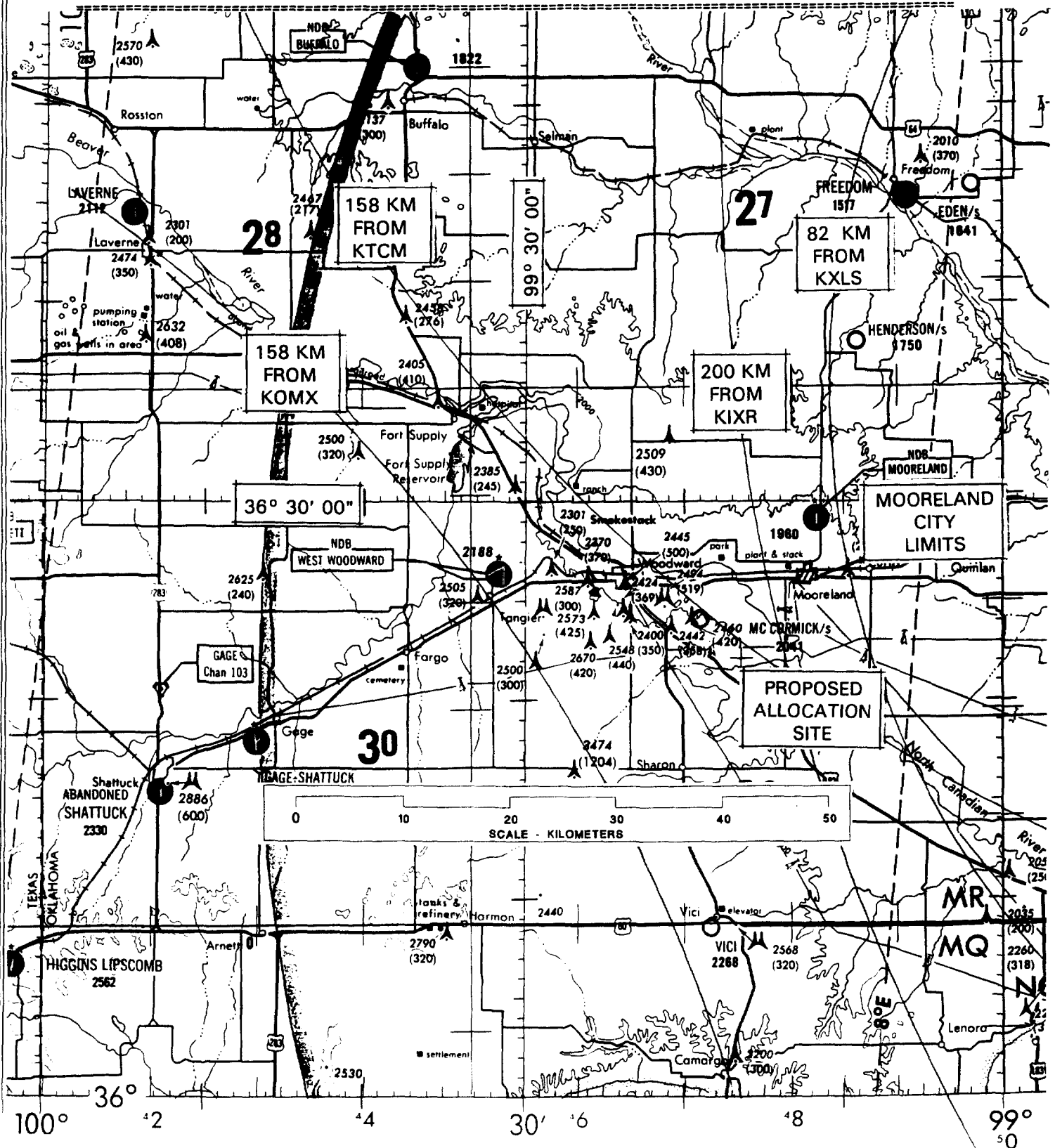
BROADCAST AND COMMUNICATIONS CONSULTING ENGINEERS

P. O. Box 356 McKinney, Texas 75069

MEMBER AFCCE

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EXHIBIT-2  
FM 92 BROADCASTERS, INC.  
MAP SHOWING PROPOSED ALLOCATION SITE  
AND AREA TO LOCATE  
CHANNEL 261C1  
MOORELAND, OKLAHOMA



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BROADCAST AND COMMUNICATIONS CONSULTING ENGINEERS  
P. O. Box 356 McKinney, Texas 75069  
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EXHIBIT-3  
FM 92 BROADCASTERS, INC.  
FCC LETTER NOTING CANCELLATION OF  
CONSTRUCTION PERMIT FOR STATION KWFx

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FCC MAIL SECTION

FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON, DC 20554

SEP 9 10 07 AM '94

SEP 02 1994

IN REPLY REFER TO:  
1800B3-KEH

DISPATCHED BY

A. R. Fuchs, Secretary  
Fuchs Communications, Inc.  
P. O. Box 1246  
Woodward, Oklahoma 73802

In re: KWFx(FM), Woodward, Oklahoma  
BMPH-940422JC  
Application requesting  
additional time to construct

Dear Secretary Fuchs:

This letter is in reference to the above-captioned application and your letter of August 8, 1994 requesting that the subject construction permit, File No. BPH-911220IE be cancelled.

Accordingly, pursuant to your request, the request to authorize additional time to construct (File No. BMPH-940422JC) IS HEREBY DISMISSED, and construction permit File No. BPH-911220IE IS HEREBY DECLARED FORFEITED AND CANCELLED.

Sincerely,

Dennis Williams  
Chief, FM Branch  
Audio Services Division  
Mass Media Bureau

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CERTIFICATION OF ENGINEER

I hereby state that:

I am President of Sellmeyer Engineering

The Firm of Sellmeyer Engineering has been retained by FM 92 Broadcasters, Inc. to prepare this Engineering Exhibit

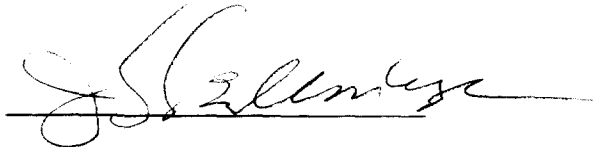
I am a graduate of Arizona State University with the degree of Bachelor of Science in Engineering

I am a Registered Professional Engineer in the States of Ohio and Texas

My qualifications as an Engineer are a matter of record with the Federal Communications Commission, having been previously accepted in applications of this type

This Engineering Exhibit was prepared by me personally or under my direct supervision, and

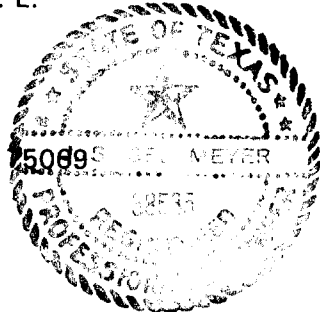
All facts stated herein are true and correct to the best of my knowledge and belief.



J. S. Sellmeyer, P. E.

January 13, 1996

P. O. Box 356  
McKinney, Texas  
214-542-2056



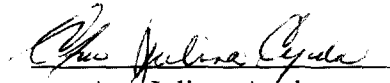
**CERTIFICATE OF SERVICE**

I, Ana Julissa Ayala, do hereby certify that I have this 21st day of March, 1995, mailed by first-class United States mail, postage prepaid, copies of the foregoing **"PETITION FOR RULE MAKING AND REQUEST FOR ORDER TO SHOW CAUSE"** to the following:

\*John A. Karousos  
Chief, Allocations Division  
Policy and Rules Division  
Allocations Branch  
Federal Communications Commission  
2000 M Street, N.W., Room 554  
Washington, DC 20554

\*Dennis Williams  
Chief, FM Branch  
Federal Communications Commission  
1919 M Street, N.W., Room 332  
Washington, D.C. 20554

F. Joseph Brinig, Esq.  
1427 Dolley Madison Boulevard  
McLean, Virginia 22101

  
Ana Julissa Ayala

**\*Hand Delivery**